

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)	
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Broadcast Localism)	MB Docket No. 04-223
)	
)	
To the Commission)	

COMMENTS OF SAM BROWN

The FCC is charged with a daunting and paradoxical task – ensure that broadcasters operate as public trustees of the airwaves in the public interest, convenience and necessity – all without regulating their programming content! Regulators of many nations who have the dubious “luxury” of assigning frequencies to stations based on their proposed formats would not envy the work of this commission which must uphold the First Amendment while judiciously doling the extremely limited resource that is spectrum space. Yet this freedom that makes regulation so difficult is precisely the American attribute that is the envy of the almost the entire world. This lack of content regulation forces a very close look to the proper and perhaps detailed regulation of the process of broadcasting to achieve these seemingly contradictory goals.

As a matter of introduction, I am respectfully filing these comments personally in the public interest, based upon my experiences as a one-time commercial radio station owner, radio employee, broadcast engineer, operations manager of a national radio news network (UPI Radio), political observer, longtime radio hobbyist and DX'er, ham radio licensee, present-day business owner, and lifelong devoted listener and close observer of domestic and international broadcasts. Perhaps more importantly, I have no “horse in this race”, no present or intended financial or political interests at stake, nor any particular message that I am trying to send to the public via the broadcast media. It is my hope that they will be useful in this proceeding.

For business and personal reasons, I have discussed many of these questions, over the course of many years with many people. In many ways most of my comments are representative of a broad consensus among three important groups. First is those involved in broadcasting; these are the employees of radio stations, speaking candidly and not representing the opinions of large group owners. The next group is of fans and hobbyists, having substantial knowledge and strong opinions of how radio stations do, don't, and can serve their local communities. Perhaps the most important group is the third. They are people who, like all of us, listen to or watch broadcasts but have no particular interest in broadcasting – the general public. While they do not know the reasons for massive changes the industry has seen in recent years, they know the output has changed in ways that they mostly view negatively. What is amazing is that the three groups generally want the same results, even though their motivations and words for expressing such desires differ greatly.

Having been a licensee, an applicant, and a commentor, my dealings with the commission have been extensive and frequent. While some comments challenge some of the bases of certain regulatory structures, nothing herein is intended a disrespect, bad feelings or insult toward the commission. The FCC, like all institutions, sometimes relies rather heavily on its own traditions for its thinking and could benefit from external perspectives. The very fact of this NOI serves as proof that the commission has recognition of this, and is an admirable endeavour that can be a critical step in the improvement of local service by our nation's broadcast media outlets.

Perhaps it satisfies some political curiosity to state that my biases in most cases are toward less governmental involvement in business and less regulation. However, my preference for *laissez-faire* capitalism cannot fully extend to the use of extremely limited resources. If it were possible for every new

person interested in establishing a station to do so, then every taste and need in the community would be served with very little regulation, as is the case in the retail and restaurant industries. Since this is not the case, careful management of the limited resource, along with measures designed to expand it, is the best way to ensure that the public is served.

In these comments, many aspects of this NOI will be addressed. I will draw many of my examples from right here in the Washington-Baltimore area. This is done because of my familiarity and yours with the place we call home. It should be noted, however, that in all cases where such specific examples are used for illustration of any point, they are examples of wider trends affecting many parts of the United States. My interest and expertise is stronger and more detailed in radio than in television, so while all radio issues are addressed, some TV questions are best left to others. The points below will be enumerated to roughly follow the numbered points of the NOI, though some will be skipped where no questions asked or no comments apply.

1. In this section, localism is correctly identified as a “cornerstone” of broadcast regulation, but licensees are described as “temporary public trustees.” Public trusteeship is an intellectually and philosophically appealing concept, but is true? It may be more useful to realise that renewal expectancy is strong enough, and needs to be, that there is nothing truly “temporary” about a license. Revocations are incredibly rare, and only occur in the event of severe, deliberate, intentional violations, but not for simple lack of service to a community. The reality is that control of the public’s airwaves has gradually gone from those who got frequencies by being the first to apply in the early days of radio through post-WW2 boom, to those with great legal skill on their side in the 60’s and 70’s style comparative application process, to those with the vast capital resources to purchase existing stations now that the dial is full in almost every significantly-populated area. A broadcast station license has become a limited public resource that can be bought and sold, but a price that more than reflects its extreme rarity. It would be desirable to see a return to the concept of the license bringing responsibility to serve, along with the right to transmit.

The issue of the deregulation of the 80’s is the classic “red herring” in this discussion. Many people, especially on the political left, blame the deregulation for the reduction in service and responsiveness to communities on the part of broadcasters. More careful observation would show that the major changes in the industry did not occur due to deregulation. Most of the old regulations were an unnecessary administrative burden on the stations and the FCC, with little to no real efficacy. Unfortunately, stations did reduce their service to the community as ownership rules changed. First the elimination of anti-trafficking rules made more broadcasters find ways to cut costs and do “stunts” to boost ratings temporarily. Next, the standards of contour overlap were changed which allowed a “back door” method of owning multiple stations in a market. Then multi-station combo’s were allowed, and finally the Communications Act of 1996 removed the rest of the barriers. What this all shows is that the relatively unregulated state of the industry was sufficient when each station (except AM-FM combo) was separately owned; while the reduced competition of today’s marketplace does not allow adequate levels of local service with a similar regime.

This leads to the main point of this comment – only two conditions will improve the localism of the broadcast service. One is more competition. While satellite radio helps provide competition, it provides no localism, and thus cannot “force” this attribute in the competitive arena. Since ownership rules are not on the table, this can only come from new and creative ways of providing more voices. The other factor is regulation. Since the airwaves are **limited** public resource, they must be managed. These two concepts also interact. The greater the extent of competition (the greater the number and diversity of types of broadcasters), the less regulation is needed. With an infinite number of possible stations, almost no regulation would be needed; with a handful of broadcasters controlling the entire band, careful public management would be indicated; any measure that increases the opportunity for more potential broadcasters to transmit will increase the tendency for the free market to do most of the work of ensuring responsiveness to the local community.

- 2.. The “City of License” was a valid concept when devised. Is it still a good benchmark for localism?

It is an idea that has been so central to regulatory theory that it is rarely been questioned. In 1934, and up to the early 50's there were few, if any, suburbs. Almost every city and town was self-contained. Today, the vast majority of Americans would consider themselves to be residents of Metro Areas, more than of towns or cities. Consider, for example, how often people who live in suburbs will even claim to be from the nearest city when traveling and asked where they live. From this majority, I've heard many complaints about how "radio in DC sounds just like radio in Philly, or radio in Boston," and about how the personalities do not know the area, how the music is "generic", how you can't get the time or weather, etc. People are NOT complaining about whether WPGC serves Morningside, MD, or whether WAVA's studio is within the city limits of Arlington. Indeed, it would be a severe waste of spectrum if "Bethesda's radio station", WARW used its 50,000 watts to broadcast High School football, and chamber of commerce meetings for Bethesda and ignored the rest of the Washington-Baltimore region. Perhaps change in thinking is indicated.

The City of License is still valid for rural areas, but falls short elsewhere. Some regulations have used "markets," but this too presents problems of definition. Rating services base their markets on the desires of their broadcast and advertiser clients, not on reality or public interest. For example, the South Central Pennsylvania metro area is split into three Arbitron markets, York, Lancaster, and Harrisburg, even though these are for practical purposes the three largest communities in a single region, and even though 95% of the broadcast signals in that region cover all of it and have a region-wide audience. On the other hand, Belle Glade, FL is in the Palm Beach market, even though its station is not generally receivable in Palm Beach and much of the media available in Belle Glade are from other "markets." Additional confusion is added by the fact that license cities are often chosen for sheer obscurity, in order not to attract competing applications – tiny once-named crossroads that even most local people don't know. Other cities are chosen because of the directional pattern of a station and the larger city it would serve, even though the larger city would not quite meet the city-grade requirements for the city of license (e.g. WBIS proposing "Garrison" because they could put a sufficient night signal there while really going after Baltimore). Interestingly, defining of service areas is a task which the free-market performs very well. Stations serve the places that they cover, to a standard of reception adequate for them to succeed, rather playing than to a precise technical standard of "city-grade". Their efforts are not focused, in most cases, on a particular single town within their coverage area.

My suggestion for defining "local" for purposes of localism, main studio location, etc. is – "The area included in the station's service contours (50dBu FM, 2.0 mv/m AM) and any additional area where the station can be received and actively strives to garner an audience."

One the present mechanisms for "ensuring" local service is the Public File. This is unfortunate. It's an idea that sounds good from a regulator's viewpoint, but is an absolutely meaningless administrative exercise that is of no benefit to the general public. While it does make sense to require that certain documents be public, this does not mean anything to the typical listener. In my experience these files are only used by broadcast students assigned to go look at them, competitors or competing applicants trying to find a fault as a basis for complaint, or in rare cases by politically-active individual citizens with "an axe to grind." Average listeners have no idea that they exist (despite occasional announcements) and would not have time to look at such files, and would have neither the time nor knowledge to act on any information contained therein. This well-intentioned, but silly attempt at a system of accountability should be scrapped.

5. One of the other underlying false assumptions is that stations' service to their communities is primarily in the area of news, public-service, or other "non-entertainment" programming. Most people listen to radio and watch television for entertainment as much as, or more than, they do for information. When many of us were growing up, listening to the local top-40 station, it had local announcers doing their programmes live (even though the music was recorded), taking requests, making local appearances, presenting local talent, etc. The specific music selection and announcers were heard only on one local station and were responsive to the tastes of the region of which they were a part. This example intentionally uses the lightest of programming, which many regulators would not historically have considered an important part of the station's contribution to the community, yet which were integral and relevant to the daily lives of listeners. It should also be noted that these local DJ's were also able to relay information quickly and effectively

during storms and local emergencies – not on a separate news station, but on the one to which many people were already tuned.

It is no surprise that people are dissatisfied with local broadcast service. Here in the nation's fourth-largest metro area (Washington-Baltimore), only two radio stations have 24-hour news departments. Only two or three others make even a token attempt at local news coverage. Music and entertainment programming uses formulas devised for large groups of stations, often with voice-tracked announcers from afar and national contests which local listeners rarely win.

7. It would make sense to create a formula for determining how "local" a station is. Create a point-system for regularly-scheduled programming that would reward more localized types of programming. For example:
 - a. Each hour of the week would be scored. A percentage of the total possible points would result in an overall level of local service.
 - b. Each hour would have 10 possible points, except 00:00 to 02:00 would have 5 points, 02:00 to 05:00 would have 3 points, 5:00 to 6:00 (8:00 weekends) would have 5.
 - c. Examples of percentages of possible points for various programme types
 1. Local talk show (heard only on one station*) – 80%
 2. Local talk show with local newscasts – 100%
 3. Syndicated/network talk with local weather only – 5%
 4. Syndicated/network talk with local weather and recorded news – 25%
 5. Syndicated/network talk with local on-air newscaster on premises and actively gathering news and information – 70%
 6. Live local event or first or second airing of recorded local event – 100%
 7. Local concert or church service – 100%
 8. Local, live DJ playing music, with playlists and rotations specific to station – 80%
 9. Local, live DJ playing music with playlists and rotations specific to station and local newscasts – 100%
 10. Local-only DJ recorded with local playlists and rotations – 60%
 11. As above with weather, time, and recorded local news 75%
 12. Local-only DJ recorded – 35%
 13. As above with weather, time, and recorded local news – 45%
 14. Syndicated/voicetracked DJ with local weather only – 5%
 15. Syndicated/voicetracked DJ with local weather, time, and PSA's – 10%
 16. Syndicated/voicetracked DJ with local weather, time, recorded news – 20%
 17. Syndicated/voicetracked DJ with local weather, time, live local news – 40%
 18. Syndicated/voicetracked DJ with local newscaster gathering/presenting – 60%

*includes simulcasting group within a metropolitan area

By requiring a certain percentage of points, and encouraging more (in competitive hearing considerations, etc.), we could set standards which would create a clear minimum standard and reward those who exceed it. A standard of roughly 50 to 60% should be required, possibly higher for stations with more population in their coverage areas and less for very small markets.

9. The commission is correct in deregulating the specific process of broadcasters' communication with their communities. (see Public File comments above) This process happens naturally when broadcasters have local staff, making local decisions about programming. It fails when there is little or no local content. The problem isn't awareness of local issues, it is whether or not broadcasters will be required to address them.

12. A major concern when considering community-responsive programming is whether it is actually responding to the average citizen, or to a small cadre of “community leaders” who presume to speak for everyone. Often public-service programmes are mainly of interest to the groups presenting them rather than to most people.

It would be difficult, but desirable, to allow claims of programming uniqueness to be considered favourably in determining service to the local community. Given the responsiveness that only comes from the pressures of the free-enterprise marketplace, a station that has a format unique in commercial radio should also be given local service credit, even if there is some overlap with non-commercial stations.

16. Radio and Television are different. The expectations are not the same. While radio is considered mainly a local medium, TV has historically been driven by network and syndicated programmes with local content (other than news) as an enhancement. While most of my comments are radio-oriented, there is one important step that could help in the Television area.

Cable systems and satellite providers are currently strapped with arbitrary Soviet-style market definitions, where people are only allowed to get the stations that authorities think are “local” for them. This is an absurdity of the first order. Any customer should be able to receive any station in his CMSA, or any other that is reasonably receivable with an antenna at his location, regardless of which one the TV industry in conjunction with the government thinks he should be able to watch.

Perhaps a sliding scale could be implemented where anyone within 10 miles of a market boundary, anyone closer or within 10 miles of equidistant to the non-market stations could receive both, and all viewers should be able to receive all normally non-network-hours programming of any TV station which either in their CMSA, or generally would watchable with a good roof-top aerial, and of any non-commercial station in their own market or any adjacent market.

This would foster more competition, as TV stations would have the guaranteed monopoly on certain communities, and would encourage stations to more effectively serve their entire communities, not just particular counties in an arbitrary zone.

24. Truly underserved audiences may not have proper broadcast service until there are opportunities for more people to operate stations. We operate in an environment where commercial stations can only feasibly serve audiences that will allow their business to prosper, and non-commercial stations are generally operated by people with a message they wish to impart. Neither will serve certain populations.

One of the other great regulatory myths is that non-commercial stations are likely to automatically be community-oriented. While many do great service, they too-often present material that someone with strong opinions thinks would be “good for us.” Thus the majority are at the ends of the political spectrum, with many religious broadcasters at the right and NPR and Pacifica on the left. It is a struggle for such stations to present information or entertainment which is not imbued with their particular philosophy. The economics of running such a station are such that if a few like-minded people contribute enough, the station will thrive. This does not require the same responsiveness to a broader audience as does the free-market, though it does well at serving certain segments of the community who may be underserved otherwise. It still leaves many unserved.

28. Stations must be able, but **not required**, to make arrangements with local officials regarding disaster recovery and information. To do otherwise would chip away at the very cornerstone of or free-speech democracy. Throughout history, many governments have become oppressive by declaring disasters or states of emergency. While this is not envisioned here, it is one of the scenarios from which our bill of rights seeks to protect us. If it became **law** that stations broadcast certain pronouncements, anyone questioning or objecting to the government’s message could be

legally sanctioned. An informal agreement to work with local officials still has 99% of the certainty of critical information being disseminated, without these greater risks. It should also be noted that in the “information age,” we are all so interconnected by phone, cell phone, computer, radio and television, that anything of sufficient importance will be communicated.

Remember back to September 11. Every station and service was carrying extensive information when it mattered most. This included those that normally have none, even where they had to make special and immediate arrangements to find coverage to carry. Any attempt to limit free speech would be undertaken without even have any widespread problem to solve.

39. National playlists and voicetracking are destroying local radio. Since music is still the main reason for most people’s radio-listening, if music programmes become bland, unresponsive to local tastes, and are controlled for reasons other than the audience of the individual station, people tune out. They have been and continue to do so. One informal poll, which correlates my own experience and that of most people I know who have satellite radio shows that once people get XM or Sirius, they rarely listen to regular FM music stations. Respondents mentioned local sports, weather and traffic as the main reasons they still sometimes switch back to standard broadcasts. Since most people still don’t have alternatives to local radio, it can still be saved. Once enough people switch, we could suffer from a “catch-22” where the economics of radio no longer support good local programming, but localism is the only reason for people to listen.

42. The present, and historical status of license renewals has developed an industry of multi-million dollar properties whose value is derived almost exclusively from these rights to the public airwaves. An industry has been built on this, and renewal expectancy has always been part of the value of having a station. It is tempting, but unrealistic to assume that much can be accomplished through the renewal process.

Making renewal denial the price for failing to serve the community would be like having a criminal justice system where the only type of penalty was death. Judges would have to let many people go, because they just couldn’t imagine sending someone to the gallows for littering, or for driving 6 MPH over the speed limit. Every case that wasn’t dismissed would be fought extremely aggressively by the defendant, knowing he would lose all if he didn’t prevail. This is precisely how we treat the community service obligations of broadcasters now. In the history of broadcasting, there have only ever been a handful of non-renewals, each for very blatant, serious violations, and occurring after a long legal fight.

If, as suggested above, and likely as in other comments, a system were devised to require certain amounts of local programming, an escalating system of fines, based on the severity of the offence and the size of the station and market is likely to keep most operators legal. Despite what is seen as poor record of service, most stations do strive to follow FCC rules.

43. Additional opportunity for people to broadcast is the other key to improving radio’s service to the public. As mentioned earlier, if everyone who wanted a station could have one, every niche would be served, as it is in retail, restaurants, and other fields where the limitation of spectrum availability is not a factor. While this is not physically possible, we can work towards this goal in several ways.

- a. Allow an LP service for commercial broadcasting. Non-commercial only allows those with “a point to make” to broadcast, rather than those who simply feel they can present a quality product for the general public. Limit the allowable commercial minutes and the amount of commercial time provided to any single sponsor – this will prevent businesses from starting stations as “endless commercial loops”, where the primary object is to promote a single business rather than to serve the community. This should also be limited so that such stations cannot be allowed power levels that would provide coverage to more than a certain percentage of a metro area

(probably around 33%), and allow petitions to deny by commercial stations if they can show that their programming is specifically focused on the same single community or small set of adjacent communities that the LP station would serve. (Examples, WNAV could claim that it primarily serves Annapolis, while WJFK-FM could not show that it is Manassas-oriented. Thus an LP commercial station could be allowed in Manassas which is unserved by local radio, despite the city of license of WJFK, while such an application could be denied if it would serve more than 33% of Annapolis.).

- b. Consider daytime-only LP AM stations as a way to provide this option in more places.
- c. Prohibit new applications for FM translators other than fill-in service and service to ultra-rural locations having no local stations. Subject to the restrictions in “a” above, allow the conversion of existing translators to LP stations.
- d. Allow no owner more than three LP stations, and then require that there be absolutely no overlap whatsoever of their coverage – not just protected contours – no location would be able to receive more than one. Allow no simulcasting of LP stations or of standard broadcast stations on LP stations.
- e. Require commercial LP stations, and now non-commercial to have a higher localism percentage (see above) than standard stations (perhaps around 70%).
- f. Allow 2nd and 3rd adjacents on FM where the LP is very close to the full-power station, such that there would be almost no location off the the immediate premises or campus of the LP station where it was stronger than the full-power station(s). Maintain co and 1st adjacent protection to the 50dBu contour for full power stations.
- g. Add a ½ or 1-watt class with no 2nd or 3rd adjacent protection required. Consider opening additional FM spectrum. This could be in the government-reserved space in the upper VHF band or could be on TV channels 5 and 6, using them only where it would not interfere (mostly for the flea-powered stations) and then increasing use after all TV makes the transition to digital. Require new radios having stereo FM to have the new band. Reserve it for LP 10 watts and less, except allow some FM stations to move where it would eliminate local co-channels and first-adjacents. Priority would be given to the station that could eliminate the most such interference by moving. They could run simulcast on both for a transitional period of several years. Locally, if 105.7, 106.7, 104.1, and 107.7 moved, the existing band would provide better service to most listeners, and some popular programming would draw people to the new band, rather than making a “ghetto” for obscure stations. Do not protect 2nd adjacents on the new band and allocate it to provide the maximum possible of LP stations as many as possible of the people who want them. This would create community radio in every suburban community. It would also cause market forces to drive the larger stations into more local presence and programming.

Brief Summary –

By regulation, specifically designed to measure localism, and by expanding the likelihood of new applicants starting new small radio stations the industry can return to its heritage of serving local communities. Local television, if made competitive, rather than being assigned to audiences will improve. Spectrum space is a limited public resource and needs to be managed as such. Thank you for your time in considering these ideas.

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